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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**Helmut FIEBIG et al.**

Examiner: ROONEY, Nora M.

Serial No.: 10/518,927

Group Art Unit: **1644**

Filed: December 23, 2004

Title: **DNA SEQUENCE AND PREPARATION OF GRASS POLLEN ALLERGEN PHL P4 BY RECOMBINANT METHODS**

**RESPONSE TO RESTRICTION REQUIREMENT**

MAIL STOP AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated March 27, 2007, Applicants hereby elect, with traverse, Group II (claims 13-15), drawn to Phl p 4 protein or polypeptide fragments thereof and a pharmaceutical composition comprising the Phl p 4 protein or polypeptide fragments thereof.

Withdrawal of this restriction requirement is respectfully requested. At page 3 of the outstanding Office Action, the Examiner referred to Fischer et al. as the basis for her conclusion that the claims do not relate to single general inventive concept. However, no explanation was provided, and moreover, the Office Action does not provide scientific evidence as to how Fischer et al. teach and/or suggest the Phl p 4 protein of the instant invention.

The Patent Office is courteously requested to reconsider the Restriction Requirement, inasmuch as it is submitted that the entirety of the present claims possess unity of invention under 37 C.F.R. §1.499. The claims in the instant application involve related subject matter, for example, a grass pollen allergen, as recited in Applicants' elected Group II. All the claims would comprise overlapping subject matter and it would not be an undue burden on the Examiner to carry out a search. "If search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct

invention." (Emphasis added.) See, M.P.E.P. § 803. Accordingly, it is respectfully submitted that the restriction be withdrawn.

Applicants respectfully submit that at a minimum, the restriction requirement should be modified to combine Group III (claim 16), drawn to a method of using the claimed compounds for the diagnosis and/or treatment of allergies, and Group IV (claim 20), drawn to a method of making the claimed compounds. "If a product claim is found allowable, process claims that depend from or otherwise require all the limitations of the patentable product may be rejoined." See M.P.E.P. § 806.05. Therefore, a modification to the existing restriction requirement is respectfully requested.

For all of the above reasons, it is urged that the restriction requirement should be withdrawn, in total. Favorable action is earnestly solicited.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined. See, for example, M.P.E.P. §821.04, "Rejoinder."

No fees are believed to be due with this response; however, the Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,



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Attorney Docket No.: **MERCK-2966**

**Date:** • J u n e 29, 2007